

**MINUTES OF FORENSIC LABORATORY ADVISORY COMMITTEE (FLAC)
MEETING**

Wednesday, November 28, 2012 10:00 A.M.

Maryland State Police Forensic Sciences Division Laboratory
221 Milford Mill Road
Pikesville, MD 21208

Members in Attendance:

Nancy Grimm, Director OHCQ (Chairperson)
Robert Myers, Ph.D., DHMH Director of the Laboratories Administration, Ex officio
Richard S. Frank, ASCLD/LAB (2013)
Yale Caplan, Ph.D., American Academy of Forensic Sciences (2012)
Irvin Litofsky, Director Baltimore County Police Dept Laboratory (2012)
Francis Chiafari, Director Baltimore City Police Dept Laboratory (2013)
Teresa Long, Director Maryland State Police Forensic Science Division (2014)
Karin Athanas, American Association for Laboratory Accreditation (A2LA) (2014)
Kimberly E. Walker, Ph.D., American Society of Microbiology, University of Maryland School of Medicine (2013)

Members Unable to Attend:

Elissa Passiment, American Society for Clinical Laboratory Science (2012)

DHMH Staff:

Theresa DeAngelo, OHCQ Coordinator of Forensic Laboratories Program
Maris Jaunakais, OHCQ Forensic Laboratory Surveyor
Jennifer L. Newman, DHMH Deputy Director of the Laboratories Administration

Non-Members in Attendance:

Pamela Shaw, QA Manager Baltimore City PD Laboratory
Ray Wickenheiser, Director Montgomery County Police Dept Laboratory Director
Jacqueline Raskin-Burns, QA Manager Montgomery County Police Dept Laboratory
Jeffrey Kercheval, Director Hagerstown City Police Crime Laboratory
Lynnett Redhead, DNA Technical Leader Prince George County Police Dept Laboratory
Sanghamitra Baral, Drug Chemistry Supervisor Prince George County Police Dept Laboratory
Annette Box, Director Anne Arundel County Police Dept Forensic Laboratory
Craig Robinson, QA Manager Anne Arundel County Police Dept Identification/Crime Scene Section
Wanda Kuperus, QA Manager Maryland State Police Forensic Science Division
Cassandra Bume, QA Manager Baltimore County Police Dept Laboratory
William T. Vosburgh, D.D.S., Director, Prince George County Police Dept Laboratory
Det. Michael J Pachkoski, Director Harford County Sheriff's Dept Forensic Science Unit
Det. Jan P. Ryan, QA Manager Harford County Sheriff's Dept Forensic Science Unit

Quorum was established with 9 of 10 FLAC members in attendance.

AGENDA

I. Welcome and General Announcements

Chairperson Nancy Grimm, Director OHCQ, welcomed attendees and commenced the meeting at 10 A.M. The 25 attendees introduced themselves. Chairperson Grimm made a motion to have the minutes of the August 22, 2012 FLAC meeting approved. No objections were raised and the minutes were approved.

II. Update on Non-Accredited Laboratories' Forensic Surveys

Ms. Theresa DeAngelo provided updates about OHCQ efforts to survey Non-Accredited Laboratories. As required by COMAR 10.51 Regulations that became effective May 28, 2012, all Non-Accredited Laboratories have now been surveyed. OHCQ is in the process of reviewing Corrective Actions/ Plans of Correction for these laboratories and is working with each laboratory in order for them to be in compliance with the Regulations.

III. Update on Forensic Regulations Program

Regulations became effective May 28, 2012. The license is issued for a three (3) year term and must be renewed before the term expires.

A. Permanent Licensure for Laboratories

Temporary licenses were issued last year to accredited and non-accredited laboratories with an effective date Dec 31, 2011 expiring Dec 31, 2012. Permanent 3-year licenses will be issued.

B. Accreditation Organizations Approved by the Department

Crosswalk agreements involving the sharing of information by forensic laboratory accrediting organizations with OHCQ have been established with four (4) organizations. By regulation these organizations are approved by the Department and their accreditation programs are accepted for MD State forensic lab licensing. The approved organizations are:

1. American Association for Laboratory Accreditation (A2LA) (Program cycle is 2 years)
2. American Board of Forensic Toxicology (ABFT) (Program cycle is 2 years)
3. American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) (Program cycle is 5 years)
4. Forensic Quality Services (FQS) (Program cycle is 4 years)

This information will be posted shortly at the OHCQ web site:

<http://dhmh.maryland.gov/ohcq/ForLabs/default.aspx>

C. Proficiency Test Program

OHCQ has approved seven (7) Proficiency Test (PT) providers that are approved by accrediting organizations. A list of PT providers and tests they offer can be found at OHCQ web site: <http://dhmh.maryland.gov/ohcq/ForLabs/SitePages/Approved%20Proficiency%20Test%20Providers.aspx>

The PT providers are approved because they satisfy regulation requirements for an external PT program, i.e., COMAR 10.51.04.03 states:

.03 Proficiency Testing Provider Approval.

A. Approval Required. A private, nonprofit, or commercial organization or government agency may not provide a proficiency test in this State for use by a forensic laboratory without first obtaining proficiency testing approval from the Department.

B. Approval Granted by the Secretary. The Department may approve a proficiency testing provider for a forensic science discipline or subdiscipline, if the proficiency testing provider:

- (1) Provides reliable, documented evidence to the Department that the proficiency test is technically and administratively able to meet the applicable requirements of this chapter; and*
- (2) Submits directly to the Department evaluations of all proficiency test results from each laboratory that holds a Maryland forensic laboratory permit.*

Concerns were raised about OHCQ's oversight policy for handling PT test results: Interpretation of PT results when consensus is 56 – 44, or 50 – 50? How will OHCQ handle this situation?

Some voiced their understanding that considerations must include whether PT test was taken by a new trainee, an experienced examiner, or for some other purpose. Other relevant considerations specific for the forensic discipline must also be taken into account, e.g., in latent print identifications, what the laboratory's SOP guidelines are for making an identification (minimum 12 point, 10 point, 8 point, etc., points of comparison).

Accrediting bodies need to be involved and examine the circumstances that affect PT test results.

COMAR 10.51.05.02 C: C. Deficiencies, Errors, and Corrective Actions. A licensee shall have:

(1) A procedure for corrective actions to be taken when a deficiency or error is identified with:

- (a) A forensic analysis procedure or method; or*
- (b) The casework or **proficiency testing** of a forensic analyst or examiner; and*

(2) The procedure and required documentation for the corrective actions include:

- (a) A determination of the cause of the deficiency or error;*
- (b) An evaluation of the deficiency or error to determine if the deficiency or error causes or has caused an adverse effect on the quality of a forensic analysis;*
- (c) An indication of the individual responsible for corrective action;*
- (d) A timeline of corrective action or actions; and*
- (e) Verification that the corrective action was:
 - (i) Implemented; and*
 - (ii) Monitored for effectiveness in correcting the deficiency or error.**

Definitions:

(71) "Proficiency testing" means determining the ability of an individual or a forensic laboratory to perform a forensic analysis to obtain a correct test result by:

- (a) Performing a forensic analysis on a sample provided by a proficiency testing provider or laboratory director; and*
- (b) Reporting the results of the forensic analysis to the proficiency testing provider or laboratory director for evaluation.*

(72) "Proficiency testing provider" means an entity external to the participating forensic laboratory that:

- (a) Has one or more samples with values initially known only by the proficiency testing provider;*

- (b) Sends one or more samples to a participating forensic laboratory to perform forensic analyses; and*
- (c) Reports the results to the provider.*

Questions were asked about situations in which laboratories are not able to maintain PT compliance with regulatory requirements for reasons, i.e., particular PT is unavailable, reagents are unavailable or equipment is inoperative due to temporary budgetary constraints, etc. How would OHCQ handle the situation? In response Chairperson Nancy Grimm, Director of OHCQ, commented "If justification exists for not being able to perform PT in allocated time, a good faith effort will be considered. OHCQ will be reasonable and fair."

Statement was made that one accredited lab coordinates with another accredited lab to conduct firearms operability proficiency testing. Some expressed their belief that regulations allow external PT to be done within reason, i.e., as long as a good faith effort is made.

OHCQ was to check back with their legal counsel and work on a policy for handling the oversight of the proficiency testing programs for accredited and non-accredited forensic laboratories and forensic units.

Questions were asked as to when the policy is developed will it be retroactive to May 2012 or have its own implementation date.

D. Expert Witnesses and Letters of Permit Exception

Concerns were expressed that one expert witness was testifying in MD State criminal courts of law and does not have a Letter of Permit Exception. After unsuccessful attempts to contact OHCQ were made, the presiding Judge allowed the testimony of the expert. What legal steps can OHCQ take to get the person licensed? OHCQ requested as much information as possible in this matter so that OHCQ can properly address the issue.

OHCQ plans to request time to discuss this issue at one of the Judicial Training meetings. It was also suggested that OHQC send out letters to the MD Chiefs of Police to inform them of the law and of the new regulations.

IV. Update of Drug Analysis Certification and DHMH 1992 Manual

In 1992 working group was established to draft the DHMH Manual which was headed up by Dr. DeBoy. There is a need to update/revise the manual to include synthetic drugs, etc. However, forensic labs use their own procedures and conduct "technical review," as required by regulation. The labs use peer reviewed articles, DEA Microgram publications, other published journals, and take into account SWGDRUG guidelines and the UNDOC. Is there a need for multiple layers of oversight if proper steps are currently being employed? Does need still exist for DHMH Manual? Or for the separate statues/regulations, can the new oversight regulations replace the older regulations that deal only with CDS issues? The manual that is still listed in the State Regulations COMAR 10.10.09, is it needed or should it be removed from the regulations during the next legislative session? (An opinion from the AG is needed to answer the last question)

Consensus agreed that a sub-group of FLAC involving additional subject matter experts would be employed to address the matter. A drug committee would be established with initial meeting in the near term.

V. Questions/Issues Regarding Regulations

Harford County: Some non-accredited labs associated with Sheriff's Departments and having sworn officers in positions now will experience difficulty meeting regulatory requirements to fill the Director and QA Manager positions in future years. Is there some exception or regulatory process to allow agencies to maintain being licensed? Problems will occur when these key positions become

vacant and after 2018. Other labs providing limited forensic laboratory services, such as Latent Print Comparisons, will be also in similar difficulty.

VI. Adjournment

Speaking for the DHMH OHCQ, Chairperson Nancy Grimm encouraged all to establish and maintain contact with OHCQ and to use the office as a resource. The majority of attendees supported having quarterly FLAC meetings with the next one tentatively scheduled for March 2013.

Motion was made by Chairperson Nancy Grimm to adjourn the meeting. Motion was approved.

Meeting adjourned at 11:25 A.M.